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Case No.: S0200CV201900183  
HON. DAVID THORN

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCHISE**

**MICHAEL AND JUNE YORK, A MARRIED  
COUPLE,**

**Case No.:**

Plaintiffs,

**COMPLAINT**

vs.

**COUNTY OF COCHISE, A POLITICAL  
SUBDIVISION OF THE STATE OF ARIZONA,**

Defendant.

For their Complaint against Defendant, Plaintiffs Michael and June York allege as follows:

1. Plaintiffs Michael and June York, reside in the 3000 block of E. Sulphur Springs Road, Cochise County, AZ 85643 in unincorporated Cochise County.
2. Defendant Cochise County is a political subdivision of the State of Arizona that caused events to occur from which this action arises.
3. Jurisdiction is proper in this matter pursuant to A.R.S. §12-123.
4. Venue is appropriate pursuant to A.R.S. §12-401.

**FACTUAL BACKGROUND**

5. Sulphur Springs Road is an unpaved roadway maintained by Cochise County.

1 6. For many decades, the area surrounding Plaintiffs' property and along Sulphur  
2 Springs Road has been rural area primarily utilized for low density residential purposes.

3 7. While the area to the east of the nearest paved roadway – Kansas Settlement Road –  
4 has traditionally been and remains agricultural, the area to the west of such roadway has  
5 not traditionally been agricultural, but in any event has been residential and has not had  
6 residential uses in many years.

7 8. The property directly to the south of the Plaintiffs at 2955 Sulphur Springs Road  
8 ("Neighboring Property") is owned by Dennis Williams.

9 9. A few years ago, Mr. Williams began to utilize such address as the place of business  
10 for Willcox Cotton Seed Products, LLC ("WCSP").

11 10. And according to the website for WCSP - <http://willcoxcottonseedproducts.com> on  
12 the "About Us" page – the company processes cotton seed oil and has a "production of 40  
13 tons per day" making it a significant producer of cotton seed oil.

14 11. Cochise County was made aware of Mr. Williams' and WCSP's anticipated use of  
15 the Neighboring Property, but provided no public notice or opportunity for comment prior  
16 to allowing the use.

17 12. If public notice had been given and Plaintiffs' provided the opportunity for  
18 comment, they would have objected to allowing the commercial use in this area,  
19 particularly with the consequent volume of heavy trucks that would negatively affect  
20 Sulphur Springs Road.

21 13. Despite repeated demand, Cochise County has maintained that no public notice or  
22 opportunity for comment was required to be given to the Plaintiffs or any Cochise County  
23 residents.

24 14. Upon information and belief, WCSP does not process any of its own cultivated  
25 cotton seed.  
26

1 15. Rather, Plaintiffs regularly witnessed heavily laden trucks passing along Sulphur  
2 Springs Road, which has been negatively affected by the large number of heavily laden  
3 trucks passing along the roadway.

4 16. As a result of the situation, Plaintiffs have been unable to utilize the roadway during  
5 significant periods of time and have had the use and enjoyment of their property  
6 diminished.

7 17. Instead of regulating Mr. Williams and WCSP or providing for a paved roadway  
8 that would not be negatively affected by the heavy vehicles, Cochise County has instead  
9 engaged in a pattern of threats and harassment against Plaintiffs that have affected their  
10 rights.

11 18. In recent months, Plaintiffs have observed WCSP stockpiling additional equipment  
12 for a potential expansion of the operations and have notified Cochise County of the likely  
13 expansion of the operations on the Neighboring Property. Despite such notice, however,  
14 Cochise County has failed and continues to refuse to take any action, including requiring a  
15 Special Use Authorization for the operation.

16 **RELEVANT ZONING REGULATIONS**

17 19. Plaintiffs' property and the Neighboring Property are designated RU Zoning  
18 Districts by Cochise County.

19 20. Prior to permitting or allowing the use of a cotton oil processing operation in a RU  
20 Zoning District, Mr. Williams was required to request and Cochise County was obligated  
21 to require a "Special Use Authorization" ("SUA"), which requires public notice and  
22 opportunity for comment as set forth in Section 1716 of the Zoning Code.

23 21. Cochise County has claimed in writing that Zoning Regulation 603.16 allows for the  
24 use as a matter of right of a cotton-oil processing plant at 2955 Sulphur Springs Road. The  
25 citation is to the incorrect provision, but 603.18 regards "Ag-processing with a 300-foot  
26 minimum set back" that appears to be the provision claimed by Cochise County. However,

1 such provision that might generally allow for “agricultural processing” does not apply with  
2 regard to the Sulphur Springs Road area or, indeed, to the Neighboring Property.

3 22. Cochise County Ordinance 12-10 and §601.07 generally provides for agricultural  
4 uses to be allowed in areas in which agricultural has been continual and consistent, but this  
5 is not the case with regard to the area of Sulphur Springs Road in question as the  
6 immediate area has not been agricultural in decades, but rater is and remains a rural  
7 residential area.

8 23. Because Sulphur Springs Road and the area surrounding the Neighboring Property  
9 have not continually nor consistently been used for agricultural related uses, but instead  
10 Mr. Williams changed the use when he began WCSP and processing cotton seed oil on the  
11 Neighboring Property.

12 24. According to the Cochise County Zoning Regulations, the guidance provided in  
13 §601.04 and .06 related to rural areas is that the regulations should be interpreted to  
14 “minimize traffic congestion, and preserve the existing rural environment” and “protect the  
15 quality of the natural environment as it relates to safeguarding the health, safety and  
16 welfare of the people of Cochise County”.

17 25. Additionally, the processing of cotton seed oil from agricultural product trucked in  
18 from elsewhere is not the manner of “Ag-processing” that, either by type, scope, or  
19 intensity, is permitted as of right in the RU Zoning District, regardless of the length of a  
20 setback, on the Neighboring Property.

21 26. The Article of the Cochise County Zoning Code entitled Special Use Authorization  
22 requires a “Special Use Authorization from the Planning Commission in the RU Zoning  
23 Districts” for certain uses, including specified types of agricultural processing.

24 27. Specifically, §607.16 requires a SUA for the “Manufacturing, wholesaling,  
25 warehousing, distribution, and/or storage of agriculture-related products” which would  
26 require an SUA for the use of cotton seed oil processing on the Neighboring Property.

1 28. Cochise County Zoning Code §607.17 also requires an SUA for “Manufacturing,  
2 wholesaling, warehousing, distribution, and/or storage of products, activity area not to  
3 exceed 5,000-square feet” which would require an SUA for the use of cotton seed oil  
4 processing on the Neighboring Property, but also as the operation on the Neighboring  
5 Property now exceeds “5,000-square feet” an SUA is required.

6 29. Cochise County Zoning Code §607.23 might also be implicated as it regards “Retail  
7 sales, rentals, or accessory storage of materials, merchandise, supplies and/or equipment”  
8 and, upon information and belief, WCSP engaged in such activities that would likewise  
9 require an SUA.

10 30. In this regard, if a commercial use, even if it is agricultural in nature, is to be  
11 allowed in an RU Zoning District, an SUA should specifically provide for safe ingress and  
12 egress along Sulphur Springs Road by requiring widening and paving of the road.

### 13 **DISCRIMINATION AGAINST PLAINTIFFS**

14 31. Plaintiffs have been vocal opponents of Cochise County’s failure to take action  
15 required under the Cochise County Zoning Code.

16 32. Cochise County has responded to Plaintiffs’ vocal opposition by directing targeted  
17 threats and action against Plaintiffs.

18 33. This has included Plaintiffs property receiving a yellow tag notice of encroachment  
19 from the Cochise County Highway and Floodplain Department indicating that their  
20 driveway indicators and other property were encroaching into the roadway and needed to  
21 be removed “ASAP OR COUNTY WILL REMOVE” where other similarly situated  
22 persons did not receive such threat of removal or destruction of their property.

23 34. Plaintiffs reasonably believe that this and other actions are the result of retaliation  
24 by Cochise County against Plaintiffs.

**COUNT I – DECLARATORY RELIEF**

35. Plaintiffs allege each of the foregoing allegations as if set forth in full herein.

36. An actual justiciable controversy exists with regard to Cochise County's obligation to following its own Zoning Code and associated regulations.

37. Plaintiffs have made written demand upon Cochise County prior to bringing this action for declaratory judgment, but Cochise County has failed and refused to comply with the requirements of the Zoning Code, making this a controversy that is real and not merely colorable.

38. Plaintiffs have an interest in seeking a declaration that Cochise County comply with the Cochise County Zoning regulations, both as citizens and residents of Cochise County, but also as parties directly affected by the actions on the Neighboring Property.

39. Pursuant to A.R.S. §12-1831 et seq., Plaintiffs are entitled to obtain a declaration of their rights with regard to statute, regulation, or administrative action and seek the following declaratory relief:

- A declaration that Cochise County require a SUA with regard to the past, current, and potential future operations of WCSP at the Neighboring Property;
- A declaration that Cochise County comply with the requirements for public notice and an opportunity for comment with regard to the past, current, and potential future operations of WCSP at the Neighboring Property; and
- A declaration that Cochise County comply with the requirements of the Cochise County Zoning code with regard to the operations of WCSP at the Neighboring Property.

40. Alternatively, Plaintiffs seek mandamus relief compelling the appropriate Cochise County official to undertake the action required by the above sought declaratory relief.

1 41. Plaintiffs request their reasonable attorneys' fees and costs pursuant to A.R.S. §§12-  
2 341.01 and 2030.

3 **COUNT II – INJUNCTIVE RELIEF**

4 42. Plaintiffs allege each of the foregoing allegations as if set forth in full herein.

5 43. Cochise County has taken or threatened to take actions against Plaintiffs in  
6 retaliation against Plaintiffs.

7 44. Such retaliatory actions and disparate treatment undertaken or threatened by  
8 Cochise County are the result of discrimination by Cochise County and/or its officials or  
9 others acting on its behalf.

10 45. Plaintiffs are entitled to an injunction against Cochise County prevent further  
11 actions of discrimination and disparate treatment undertaken by Cochise County and/or its  
12 officials or others acting on its behalf.

13 WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against  
14 Cochise County and award the Declaratory, Mandamus, and Injunctive relief as provided  
15 for in this Complaint, for an award of Plaintiffs' costs and attorney's fees, and for such  
16 other and further relief as the Court may deem just.

17 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2019.

18  
19 WATERFALL, ECONOMIDIS, CALDWELL,  
HANSHAW & VILLAMANA, P.C.

20 By: /s/ Corey B. Larson

21 Corey B. Larson  
22 Attorneys for Plaintiffs York  
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